

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

_____X		
MERISANT COMPANY,	:	Civil Action No. 04-CV-5504
	:	
Plaintiff,	:	
	:	McNEIL's PROPOSED
v.	:	SPECIAL VERDICT FORM
	:	
McNEIL NUTRITIONALS, LLC and	:	
McNEIL-PPC, INC.,	:	
	:	
Defendants.	:	
_____X		

We, the jury in this case, make these answers to the following questions:

FALSE ADVERTISING UNDER FEDERAL LAW AND PENNSYLVANIA LAW

I. "MADE FROM SUGAR, TASTES LIKE SUGAR" -- FALSITY

Question 1. Do you find that the advertising claim "made from sugar, tastes like sugar" is literally false?

_____ YES

_____ NO

IF "YES," PROCEED TO QUESTION 2.

IF "NO," SKIP QUESTIONS 2- 3 AND PROCEED TO QUESTION 4.

Question 2. Do you find that the literal claim "made from sugar, tastes like sugar" is material in that it is likely to influence consumers' purchasing decisions?

_____ YES

_____ NO

IF "YES," PROCEED TO QUESTION 3.

IF "NO," SKIP QUESTION 3 AND PROCEED TO QUESTION 4.

Question 3. Do you find that Merisant has been injured as a result of the literal claim “made from sugar, tastes like sugar”?

_____ YES

_____ NO

PROCEED TO QUESTION 4.

II. “MADE FROM SUGAR, TASTES LIKE SUGAR” -- MISLEADING

Question 4. Do you find that the advertising claim “made from sugar, tastes like sugar” is misleading?

_____ YES

_____ NO

IF “YES,” PROCEED TO QUESTION 5.

IF “NO,” SKIP QUESTIONS 5-7 AND PROCEED TO QUESTION 8.

Question 5. Do you find that the advertising claim “made from sugar, tastes like sugar” actually deceives, or has a tendency to deceive, a substantial portion of its intended audience?

_____ YES

_____ NO

IF “YES,” PROCEED TO QUESTION 6.

IF “NO,” SKIP QUESTIONS 6-7 AND PROCEED TO QUESTION 8.

Question 6. Do you find the advertising claim “made from sugar, tastes like sugar” is material in that it is likely to influence consumers’ purchasing decisions?

_____ YES

_____ NO

IF “YES,” PROCEED TO QUESTION 7.

IF “NO,” SKIP QUESTION 7 AND PROCEED TO QUESTION 8.

Question 7. Do you find that Merisant has been injured as a result of the advertising claim “made from sugar, tastes like sugar”?

_____ YES

_____ NO

PROCEED TO QUESTION 8.

III. “MADE FROM SUGAR SO IT TASTES LIKE SUGAR” -- FALSITY

Question 8. Do you find that the advertising claim “made from sugar so it tastes like sugar” is literally false?

_____ YES

_____ NO

IF “YES,” PROCEED TO QUESTION 9.

IF “NO,” SKIP QUESTIONS 9-10 AND PROCEED TO QUESTION 11.

Question 9. Do you find the literal claim “made from sugar so it tastes like sugar” is material in that it is likely to influence consumers’ purchasing decisions?

_____ YES

_____ NO

IF “YES,” PROCEED TO QUESTION 10.

IF “NO,” SKIP QUESTION 10 AND PROCEED TO QUESTION 11.

Question 10. Do you find that Merisant has been injured as a result of the literal claim “made from sugar so it tastes like sugar”?

_____ YES

_____ NO

PROCEED TO QUESTION 11.

IV. “MADE FROM SUGAR SO IT TASTES LIKE SUGAR” -- MISLEADING

Question 11. Do you find that the advertising claim “made from sugar so it tastes like sugar” is misleading?

_____ YES

_____ NO

IF “YES,” PROCEED TO QUESTION 12.

IF “NO,” SKIP QUESTIONS 12-14 AND PROCEED TO QUESTION 15.

Question 12. Do you find the advertising claim “made from sugar so it tastes like sugar” actually deceives, or has a tendency to deceive, a substantial portion of its intended audience?

_____ YES

_____ NO

IF “YES,” PROCEED TO QUESTION 13.

IF “NO,” SKIP QUESTIONS 13-14 AND PROCEED TO QUESTION 15.

Question 13. Do you find that the advertising claim “made from sugar so it tastes like sugar” is material in that it is likely to influence consumers’ purchasing decisions?

_____ YES

_____ NO

IF “YES,” PROCEED TO QUESTION 14.

IF “NO,” SKIP QUESTION 14 AND PROCEED TO QUESTION 15.

Question 14. Do you find that Merisant has been injured as a result of the advertising claim “made from sugar so it tastes like sugar”?

_____ YES

_____ NO

IF YOU ANSWERED “YES” TO ALL QUESTIONS WITHIN ANY ONE OF THE ABOVE SECTIONS – SECTION I (QUESTIONS 1-3), SECTION II (QUESTIONS 4-7), SECTION III (QUESTIONS 8-10) OR SECTION IV (QUESTIONS 11-14), PLEASE PROCEED TO SECTION V BELOW; OTHERWISE YOU MAY SKIP TO THE END OF THE VERDICT FORM AND HAVE THE FOREPERSON SIGN.

V. LACHES

Question 15. On defendants’ claim that plaintiff’s false advertising claims are barred by the equitable doctrine of laches, as submitted in Instruction No. __, do you find that Merisant unreasonably delayed the filing of this lawsuit?

_____ YES

_____ NO

IF “YES,” PROCEED TO QUESTION 16.

IF “NO,” SKIP QUESTIONS 16-17 AND PROCEED TO QUESTION 18.

Question 16. On defendants’ claim that plaintiff’s false advertising claims are barred by the equitable doctrine of laches, as submitted in Instruction No. __, do you find that McNeil was prejudiced by Merisant's unreasonable delay in filing this lawsuit?

_____ YES

_____ NO

IF “YES,” PROCEED TO QUESTION 17.

IF “NO,” SKIP QUESTION 17 AND PROCEED TO QUESTION 18.

Question 17. On defendants’ claim that plaintiff’s false advertising claims are barred by the equitable doctrine of laches, as submitted in Instruction No. __, do you find that McNeil should be barred from raising the defense of laches because McNeil engaged in deliberate misconduct of a particularly egregious nature?

_____ YES

_____ NO

IF “YES,” PROCEED TO QUESTION 18.

IF “NO,” YOU MAY SKIP TO THE END OF THE VERDICT FORM AND HAVE THE FOREPERSON SIGN.

VI. DAMAGES

Question 18. Based on the standards set forth in Instructions ____, please write the amount of damages to which you have found the plaintiff entitled.

(state the amount, or if you find that
plaintiff's damages do not have
a monetary value, write in
the nominal amount of
One Dollar [\$1.00]))

**YOU HAVE COMPLETED YOUR DELIBERATIONS. PLEASE HAVE YOUR
FOREPERSON SIGN AND DATE THIS FORM BELOW.**

FOREPERSON'S SIGNATURE

DATE

Dated: April 2, 2007

Respectfully submitted,

Steven A. Zalesin
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